

Montana Water Court
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FILED
08/08/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0182-R-2020
Lambert, Kathryn
6.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Charlene A. Eichman; F. Donald Eichman; Brian P.
Maggio

CASE 43B-0182-R-2020
43B 122552-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The ditch identified on the abstract for this claim in the Preliminary Decree is Upland Ditch. During preparation of the Preliminary Decree, the point of diversion legal description was changed to the legal description for Mill Creek Flat Ditch, not for Upland Ditch. In 2021, the Montana Department of Natural Resources and Conservation ["DNRC"] prepared a new

marked aerial photograph for the Mill Creek claimants and the Court to use to determine the correct ditch name and point of diversion legal description. On April 4, 2023 the Order Re-Opening Case And Setting Filing Deadline was issued to address this error with the claimants. A copy of the new marked aerial photograph was included. On May 18, 2023 Charlene Eichman filed her response stating that the ditch historically used for these water rights is Mill Creek Flat Ditch. The June 20, 2023 Order Setting Show Cause Filing Deadline states:

On May 18, 2023 Charlene Eichman filed her statement that the ditch used was Mill Creek Flat Ditch. Nothing was filed by F. Donald Eichman and Brian P. Maggio. Therefore, it is

ORDERED that the deadline is **July 20, 2023** for F. Donald Eichman and Brian P. Maggio to file a written statement showing cause why the Court should not change the ditch name to Mill Creek Flat Ditch. If not filed by July 20, 2023, the Court will conclude F. Donald Eichman and Brian P. Maggio agree with this change and will proceed with changing the claim as detailed above.

Nothing was filed by F. Donald Eichman and Brian P. Maggio. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

FINDING OF FACT

For this claim, the Preliminary Decree states that the ditch name is UPLAND DITCH. The ditch name should be MILL CREEK FLAT DITCH. The point of diversion legal description is already correctly appearing on the abstract as the NESWNE section 3, T6S, R9E, PARK.

CONCLUSION OF LAW

The new DNRC marked aerial photograph and response filed by Charlene Eichman are sufficient to contradict and overcome the prima facie claim as incorrectly modified prior to issuance of the Preliminary Decree.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the change specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended change has been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Charlene A. Eichman
F. Donald Eichman
1025 Mason Ave
Drexel Hill, PA 19026

Brian P. Maggio
PO Box 3
Pray, MT 59065

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 122552-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BRIAN P MAGGIO
PO BOX 3
PRAY, MT 59065

F DONALD EICHMAN
1025 MASON AVE
DREXEL HILL, PA 19026 2507

CHARLENE A EICHMAN
1025 MASON AVE
DREXEL HILL, PA 19026

Priority Date: JUNE 1, 1903

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 157.08 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 20.00

Source Name: MILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	3	6S	9E	PARK

Period of Diversion: APRIL 15 TO NOVEMBER 10

Diversion Means: HEADGATE

Ditch Name: MILL CREEK FLAT DITCH

Period of Use: APRIL 15 TO NOVEMBER 10

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00		NWSE	24	5S	8E	PARK
Total:	20.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

122550-00

122551-00

122552-00